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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 200

TRAYTON L. LATHROP, APPELLANT

v.

JOSEPH D. DONOHUE, APPELLEE.

APPEA. FROM THE SUPREME COURT OF WISCONSIN

BRIEF FOR THE STAT 3 OF ARIZONA, IDAHO, OREGON, UTAH AND WYOMING AS AMICI CURIAE

OPINION BELOW

The opinion of the Circuit Court of the State of Wisconsin is unreported, and will be found in the Record at pages 49-63. The opinion of the Supreme Court of Wisconsin is reported at 10 Wis. 2d 230, and will be found in the Record at pages 66-81.

JURISDICTION

The judgment of the Supreme Court of Wisconsin was entered on April 5, 1960 (R. 65-66), upholding the validity of its orders of December 7, 1956 and December 22, 1958, integrating the State Bar on a permanent basis and determining that they do not violate the Fourteenth Amendment to the United States Constitution and are constitutional, thereby affirming the decision of the Circuit Court. Notice

of appeal was filed on May [redacted] 1960 (R. 82); and the question of jurisdiction was postponed to the hearing of the case on the merits by order of this Court of October 10, 1960 (R. 85). The jurisdiction of this Court rests upon 28 U. S. C. 1257 (2) unless as appellant asserts "it can be said that [the Rules of the Supreme Court of Wisconsin integrating the State Bar] do not constitute a statute" within the meaning of 28 U. S. C. 1257 (2). Brief of Appellant at p. 3.

QUESTION PRESENTED

Whether the integration of the State Bar by the orders and rules of the Supreme Court of Wisconsin in the exercise of its inherent power to supervise the legal profession of the State violates any of appellant's rights under the Fourteenth Amendment.

SCOPE OF THIS BRIEF

This brief is limited to a discussion of (1) the power of each of the States named to integrate its Bar by legislative enactment as well as by rules and regulations promulgated and adopted by the Judiciary in the exercise of its inherent supervisory power over the legal profession of the State, (2) the authority so to provide that all members of its legal profession in good standing shall be admitted to the Integrated Bar as a condition precedent to the practice of the law in the State, and (3) the right also so to provide for the imposition of a reasonable periodic license fee from all of the members of the Integrated Bar as a financial aid in carrying out its purposes and functions set forth in the enabling Acts and in the rules and regulations promulgated and adopted by the Judiciary in the exercise of its inherent power over the legal profession.

INTEREST OF THESE STATES

It is believed essential to present to this Court for its consideration in connection with its deliberations of the issues raised in the *Wisconsin* case that, in the valid exercise of their plenary powers by statute and rules of the Judiciary, at least these States have made all necessary provision for the preservation and protection of the interests and welfare of the public, the administration of the law, and the memberships of these Integrated Bars. In no respect do these enabling Acts and Rules impinge or offend any constitutional rights and privileges of the members, individually or collectively, such as claimed by the appellant in the instant case. The activities of the governing bodies are supervised by the Judiciary as well as by the memberships of these Integrated Bars to prevent any abuse or usurpation of the granted power under which they must operate pursuant to the laws and Judicial Rules prescribing their functions and responsibilities.

SUMMARY OF THE ARGUMENT

I. The integration of the Bar by the State, whether by legislative enactment or by Judicial Rule or both, is valid, and does not infringe any rights of its membership under the Federal Constitution.

Admission to practice in a State and before its courts necessarily belongs to that State. The courts' control over a lawyer's professional life derives from his relation to the responsibilities of a court.

II. The enabling Acts and Judicial Rules of these States constitute a necessary and reasonable exercise of their state powers.

It is settled law that a State by enactment of its legislature and by the inherent power of its Judiciary through

rules and regulations is endowed with great discretion and latitude in establishing an Integrated Bar to protect the interests of the public, its own interests, those of its Judiciary and the legal profession of the State as a whole, and this power extends to the administration of the law, procedure and practice, and in aiding the advancement of the science of jurisprudence.

III. The Integrated Bar has proved to be successful for nearly forty years in supervising the activities of the entire membership in the practice of the legal profession and in performing the functions prescribed by state law for the general welfare of the public, the advancement of the administration of the law, as well as for the benefit of the membership.

More than half of the States have proved beyond question the value of the system of the Integrated Bar as an agency of those States and their Judiciary, in the performance of the functions for which they have been established, without infringing or offending the rights of those within the orbit of their functions and operations. The Integrated Bar has proved so successful that no State which has adopted it has changed back to a voluntary form of organization. The validity under the Federal Constitution of the State Integrated Bar system has been upheld in every State where the question has arisen.

IV. This Court in the *Hanson* case, 351 U. S. 225, in substance and effect has ruled that the integration of the Bar by a State is valid in all respects.

In that case it was said that there is no more an infringement or impairment of First Amendment rights in a "closed shop" contract, made by a union under a Federal Act, than there would be in the case of a lawyer who, by state law, is required to be a member of an Integrated Bar.

V. The Integrated Bar is a self-governing organization subject to the supervision of the Judiciary of the State.

The enabling Acts and the Judicial rules and regulations of the States afford ample provision for the membership of the Integrated Bar, individually and collectively, at annual and other meetings of its Bar and in other ways, to voice their objections to any of the activities of the officers of the Integrated Bar, and the governing body of this system cannot abuse its power since at all times it is under the effective supervisory control of the Judiciary of the State.

VI. In integrating its Bar it is for the State to select the ways and means by which the purposes and functions, prescribed by law and court rule, shall be financed to carry out the mandates thereof, and the imposition of a reasonable periodic license fee on the membership is valid.

The *Hanson* case upheld the right of the union operating under the authority of a Federal Act to impose and collect periodic dues, initiation fees and assessments for the financial support of the collective-bargaining agency from all who receive the benefits of its work, and the reasoning of this Court upon which it based that ruling applies with equal force and effect to the authority of a State and its Judiciary to provide likewise for the financial support of its Integrated Bar in its performance of the functions prescribed by the enabling Act and the rules and regulations of its courts.

VII. The use of funds derived from the license fees is valid, since the use enables the governing body to carry out all of the activities authorized by law and the rules of court, subject to appropriate Judicial supervision of the State Bar when integrated.

At least the States, which have joined in this brief, in integrating their Bars have prescribed reasonable and necessary functions and fields of activity of the officers and governing bodies which compels the view that the license fees collected periodically must be used exclusively in carrying out the duties and responsibilities imposed thereby and not otherwise. Since the use of the funds are at all times under the supervision of the Judiciary of the States, and of the memberships of their Bars, there can be no imputation that such use will be abused or usurped so as to infringe upon or offend any constitutional rights of any of the members thereof.

ARGUMENT

I

THE INTEGRATION OF THE BAR BY THE STATE, WHETHER BY LEGISLATIVE ENACTMENT OR BY JUDICIAL RULE OR BOTH, IS VALID, AND DOES NOT INFRINGE ANY RIGHTS OF ITS MEMBERSHIP UNDER THE FEDERAL CONSTITUTION.

The States of Arizona, Idaho, Oregon, Utah and Wyoming have integrated their Bars by statute, supplemented by rules and by-laws or regulations promulgated, approved and adopted by the Supreme Court of each State.

Arizona integrated its Bar in 1933; *Idaho* in 1923; *Oregon* in 1935; *Utah* in 1931; and *Wyoming* in 1939. More than half of the States have integrated their Bars and they are listed in a footnote on page 47 of Appellants' Brief in *International Association of Machinists* v. *Street*, No. 4, October Term, 1960, on the Docket of this Court, and set for argument immediately preceeding the case at bar.

The constitutional right of a State to integrate its Bar is well-settled whether accomplished by statute or rule of court, or by both as in the case of *Wyoming*. Wyo. Stat. 1957 Ann., §5-22 (B), and Rule 1 *et seq.*, Supreme Court,

id., Vol. 2, p. 23. In the instant case the Wisconsin Supreme Court elected to use its inherent power to integrate its State Bar by its orders and rules, instead of adopting the provision therefor enacted by its legislature, the court stating that the Act was merely "a declaration" or "an expression of public policy." *In re Integration of Bar*, 249 Wis. 523, 530; *In re Integration of Bar*, 273 Wis. 281, 283. In this connection that court said of the use of the inherent power: "It has been held by every court to which the question has been presented that the court has power to integrate the bar and that the integration of the bar is a judicial and not a legislative function." *Integration of Bar Case*, 244 Wis. 8, 40, citing among other cases *In re Integration of Nebraska State Bar* (1937), 133 Neb. 283. Continuing that court further said: "The power to integrate the bar is an incident to the exercise of the judicial power which is vested by the constitution of the state of Wisconsin in the supreme court . . . Judicial power is not reposed by the constitution in the legislature, hence it cannot delegate it." 244 Wis., at 40-41. Therefore, whether the practice of law is a natural or constitutional right or a privilege, and regardless of how the State's grant of permission to engage in this profession is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, 239. That case recognized in effect the right of the State to integrate its Bar. In his concurring opinion MR. JUSTICE FRANKFURTER, with whom MR. JUSTICE CLARK and MR. JUSTICE HARLAN joined, stated:

> "From the thirteenth century to this day, in England the profession itself has determined who should enter it. In the United States the courts exercise ultimate control. But while we have nothing compar-

able to the Inns of Court, with us too the profession itself, through appropriate committees, has long had a vital interest, as a sifting agency, in determining the fitness, and above all the moral fitness, of those who are certified to be entrusted with the fate of clients. With us too the requisite 'moral character' has been the historic unquestioned prerequisite of fitness. Admission to practice in a State and before its courts necessarily belongs to that State. Of course, legislation laying down general conditions of an arbitrary or discriminatory character may, like other legislation fall afoul of the Fourteenth Amendment. . . .

"It is beyond this Court's function to act as overseer of a particular result of the procedure established by a particular State for admission to its bar. . . . Especially in this realm it is not our business to substitute our judgment for the State's judgment—for it is the State in all the panoply of its powers that is under review when the action of its Supreme Court is under review." 353 U. S., at 248.

As pointed out by Winters, Bar Association Organization and Activities (1954 ed.), at p. 5:

"The leading reason for an integrated bar is simply that the bar as a whole needs an organization . . . . Integration of the bar is simply a matter of giving to this already existing group the instrumentalities which it needs for self-expression and for action in the name of and in accordance with the will of the group.

"No other organization can serve that purpose, and certainly not an unofficial, voluntary organization of a portion of the group consisting of those

members who . . . have been persuaded to go into it." *Id.* at p. 5.

As the author points out, in the integrated states the Bar polices its own ranks. This he states has "proved efficient and effective, and it contributes greatly to the high morale of the bar, for self-government is the American way." *Id.* at p. 6.

MR. JUSTICE FRANKFURTER, speaking for this Court, in *Theard* v. *United States*, 354 U. S. 278, 281, said:

> ". . . While a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route. The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context ers are included. The court's control over a lawy professional life derives from his relation to the responsibilities of a court. The matter was compendiously put by Mr. Justice Cardozo, while Chief Judge of the New York Court of Appeals. 'Membership in the bar is a privilege burdened with conditions' (*Matter of Rouss*, 221 N. Y. 81, 84, 116 N. E. 782, 783). 'The appellant was received into that ancient fellowship for something more than private gain. He became an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice.' *People ex rel. Karlin* v. *Culkin*, 248 N. Y. 465, 470-471, 162 N. E. 487, 489."

Mr. Justice Cardozo in the same case also stated: "Compliance with that condition [a fair private and professional character] is essential at the moment of admission; but it is equally essential afterwards . . . Whenever the condition is broken, the privilege is lost." 221 N. Y. 81, 84-85.

In the case of *In re Isserman*, 345 U. S. 286, 289, Mr. Chief Justice Vinson stated: "There is no vested right in an individual to practice law. Rather there is a right in the Court to protect itself, and hence society, as an instrument of justice."

In *Railway Employes' Dept.* v. *Hanson*, 351 U. S. 225, involving the question of whether a "closed shop" agreement between a union and an interstate railroad, entered into pursuant to the provisions of '2, Eleventh, of the Railway Labor Act, requiring employes to join the union and pay dues periodically, violated the First Amendment of the Federal Constitution, MR. JUSTICE DOUGLAS speaking for the Court, at pages 236-238, said:

> "Wide-ranged problems are tendered under the First Amendment. It is argued that the union shop agreement forces men into ideological and political associations which violate their right to freedom of conscience, freedom of association, and freedom of thought protected by the Bill of Rights. It is said that once a man becomes a member of these unions he is subject to vast disciplinary control and that by force of the federal Act unions now can make him conform to their ideology.
>
> "On the present record, there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar."

II

THE ENABLING ACTS AND JUDICIAL RULES OF THESE STATES CONSTITUTE A NECESSARY AND REASONABLE EXERCISE OF THEIR STATE POWERS.

It is settled law now that a State by the enactment of its legislature and by the inherent power of its Judiciary by its rules and regulations must of necessity be endowed with great discretion and latitude in establishing an Integrated Bar so as to protect the interests of the public, its own interests, those of its Judiciary and the legal profession of the State as a whole, and this power extends to the administration of the law and the procedure and practice by which the Integrated Bar must be bound as an entity. And the task of the Judiciary ends once it appears that the legislative measures adopted and the rules of the Judiciary made pursuant thereto are relevant and appropriate and within the police power of the State and the inherent power of its Judiciary.

Ever since 1921 when North Dakota became the first State to have an Integrated Bar, none of 27 State Bars now in operation "has changed back permanently to a voluntary form of organization." So states the appellee in the instant case in his brief, at page 14, in support of his motion to dismiss this appeal, citing "Supreme Court Justices Present Views on Bar Integration," 25 Jour. Am. Jud. Soc., 91, 126, 159.

The legislative measures and the Judicial adoption of rules and regulations made pursuant to and in conformity with the statutory provisions are necessary, germane to the purposes for which the Integrated Bars, of at least the States who have joined in this brief, have been established, and are appropriate to enable each of the organizations to function to the fullest extent contemplated thereby, they

are therefor within the constitutional authority of these States and their Judiciary as will be readily seen by reviewing the provisions of law and the judicially approved rules and regulations to which the attention of this Court is now called.

Arizona integrated its Bar in 1933.

Sec. 32-201, Ariz. Rev. Stat. Ann., provides that the State Bar shall be a public corporation subject to change or termination at any time. Its Supreme Court has decided these statutory provisions do not restrict the inherent power of the judiciary. *In re Sullivan* (1946), 64 Ariz. 337, 170 P. 2d 614; *In re Van Bever* (1940), 55 Ariz. 368, 101 P. 2d 790.

Other pertinent provisions are:

Sec. 32-237 which sets forth the powers of the State Bar, paragraph 2 reading:

"Formulate and enforce, with approval of the supreme court, rules of professional conduct for members of the bar in the state."

Paragraph 3 provides:

"Aid in the advancement of the science of jurisprudence and improvement of the administration of justice."

Sec. 32-264 provides that the rules and regulations of the Board of Governors when approved by the Supreme Court shall be binding on the members of the State Bar and wilful violation or breach thereof shall be punished as that court directs.

Sec. 32-261 provides:

"No person shall practice law in this state unless he is an active member of the state bar in good standing as defined in this chapter."

The case of *In re Greer* (1938), 52 Ariz. 385, 81 P. 2d 96, decides that the right to practice law is not a natural nor constitutional one, and is considered as a privilege only, bestowed upon certain persons, primarily for the benefit of society, upon such terms and conditions as the State may fix. See also *In re Gibbs* (1929), 35 Ariz. 346, 278 P. 371.

Sec. 32-263 sets forth the duties of an attorney.

Sec. 32-275 provides:

"This chapter shall not be construed to limit the supreme court's common law jurisdiction with respect to admitting and disciplining members of the bar of the supreme court."

Idaho integrated its bar in 1923.

Sec. 3-401, Idaho Code Ann., provides:

"Recognizing that the practice of the legal profession is a privilege granted by the state and not a natural right of the individual, it is deemed necessary as a matter of business policy and in the interests of the public to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper and unauthorized practice of law and unprofessional conduct of members of the bar."

The integration of the State Bar was held constitutional in the case of *In re Edwards*, 45 Idaho 676, 266 P. 665.

Sec. 3-405 declares that all persons admitted to the practice of law and are in good standing shall thereby become members of the Idaho State Bar.

Sec. 3-402 provides for the organization of the State Bar Board of Commissioners.

Sec. 3-407 prescribes the powers of the Board and authorizes it to adopt rules and by-laws subject to the approval of the Supreme Court.

Sec. 3-418 provides:

"The governor, Supreme Court, or the legislature of the State of Idaho, may request of the board an investigation and study of and recommendations upon any matter relating to the courts of this state, practice and procedure therein, practice of the law, and the administration of justice in Idaho . . . The board may, without such request, cause an investigation and study upon the same subject-matters, and after a report thereon to an annual meeting of the Idaho State Bar, report the same and the action of said meeting thereon to the governer, Supreme Court or the legislature . . ."

Sec. 3-419 provides:

"The Idaho State Bar and its board of commissioners shall have the power and authority to aid in the advancement of the science of jurisprudence and in the improvement of the administration of justice."

Sec. 3-413 provides that the rules and regulations made by the Board shall be approved by the Supreme Court.

Oregon integrated its Bar in 1935.

Sec. 9.010, Ore. Rev. Stat., as amended, provides:

"An attorney, admitted to practice in this state, is an officer and the Oregon State Bar is authorized to carry out the provisions [of certain statutory Acts]."

Sec. 9.080 defines the duties of the Board of Governors providing:

". . . The board is charged with the executive functions of the state bar and shall at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice. . . ."

Sec. 9.130 provides:

"At any meeting of the state bar the members present, by a majority vote, may modify or rescind any action or decision of the board of governors and also may instruct the board as to future action, and the board shall be bound by any such action of the bar. . . ."

Sec. 9.160 provides:

". . . no person shall practice law or represent himself as qualified to practice law unless he is an active member of the Oregon State Bar."

Sec. 9.490 provides:

"The board of governors, with the approval of the state bar given at any regular or special meeting, shall formulate rules of professional conduct, and when such rules are adopted by the Supreme Court, shall have the power to enforce the same. Such rules shall be binding upon all members of the bar."

Sec. 9.110 provides:

"The board may formulate and declare rules and regulations necessary or expedient for carrying out the functions of the Oregon State Bar . . ."

Article II of the By-Laws of the Oregon State Bar provides:

"The state bar shall foster the following purposes, namely:

"To cultivate and advance the science of jurisprudence;

"To promote reform in the law and in judicial procedure;

"To facilitate the administration of justice;

"To uphold and elevate the standard of honor, of integrity and of courtesy in the legal profession;

"To encourage higher and better education for membership in the profession and to increase the usefulness and efficiency of the bar; and

"To promote a spirit of cordiality and brotherhood among and render all proper service to the members of the bar."

Utah integrated its Bar in 1931.

Sec. 78-51-1, Utah Code Ann., 1953, provides:

"All persons . . . duly admitted to practice as an attorney and counselor at law in the Supreme Court of this state are qualified to be members of the Utah state bar, subject to the provisions of this title."

Sec. 78-51-13 provides:

"The board shall also have the power to make or cause to be made an investigation into and upon all unethical, questionable, or improper conduct of members of the bar holding judicial office and to make recommendations to the legislature with respect thereto."

Sec. 78-51-14 provides:

"All rules and regulations made by the board shall be submitted to and approved by the Supreme Court."

Sec. 78-51-19 provides:

"... Nothing in this title contained shall be construed as limiting or altering the powers of the courts to disbar or discipline members of the bar."

Sec. 78-51-20 provides:

"The governor, the Supreme Court and the legislature may request of the board an investigation and study of and recommendations upon any matter relating to the courts of this state, practices and procedure therein, practice of the law, and the administration of justice, and thereupon it shall be the duty of said board to cause such investigation and study to be made, to report thereon to an annual meeting of the Utah state bar, and, after the action of the said meeting thereon, to report the same to the officer or body making the request. The board may, without such request, cause an investigation and study upon the same subject matters, and, after a report thereon to an annual meeting of the Utah state bar, report the same and the action of said meeting thereon to the governor, the Supreme Court, or the legislature."

Sec. 78-51-9 provides:

"The board of commissioners shall have power to adopt by-laws, not in conflict with any of the terms of this title, concerning the selection and tenure of its officers and committees and their powers and duties, and generally for the control and regulation of the business of the board and of the Utah state bar."

Sec. 3-6 of the By-Laws of the Utah State Bar provides:

"The Board of Commissioners, vested with all the powers necessary or incidental to the control and

administration of the business and affairs of the Utah State Bar as provided by law subject to control by the Supreme Court, may at any time by majority vote of its membership, and when directed so to do at the Annual Meeting shall, refer and submit to the membership of the Utah State Bar or to the membership of a Section or unit thereof, defined questions affecting the substance or the administration of the law, or affecting the policy of the Utah State Bar, which in the opinion of the Board are of immediate practical consequence to the legal profession or the public of the State of Utah. The result of a referendum, when duly ascertained, shall control the action of the Bar, its Officers, Sections, Committees, units, agents and employes."

Wyoming integrated its Bar in 1939.

Sec. 5-22, Wyo. Stat. 1957 Ann., provides:

"The supreme court of Wyoming shall, from time to time promulgate such rules and regulations as the court may see proper:

. . . . . .

"(B) Organizing and governing a bar association of the attorneys at law of this state to act as an administrative agency of the supreme court of Wyoming for the purpose of enforcing such rules and regulations as are prescribed, adopted, and promulgated by the supreme court under this act, providing for the government of the state bar as a part of the judicial department of the state government and for such divisions thereof as the supreme court shall determine, and requiring all persons practicing law in this state to be members thereof in good standing, and fixing the form of its organization and operation."

The rules of the Supreme Court of Wyoming providing for the organization and government of its Bar will be found in Vol. 2, Wyo. Stat. 1957 Ann. p. 23 *et seq.*, and the By-Laws at p. 29 *et seq.*

Rule 1 states that the name shall be the "Wyoming State Bar."

"Rule 2. Membership.—All persons who are now or shall hereafter be admitted to practice as attorneys at law in this State under and pursuant to the laws thereof and who shall have paid their license fees shall constitute and be members of the State Bar, and shall be subject to the provisions of these rules."

Rule 6 establishes a Board of Commissioners and provides:

> ". . . The Board shall act as the administrative agent of the Supreme Court for the purpose of enforcing such rules and regulations as are prescribed, adopted and promulgated by the Supreme Court under the aforesaid Act."

Rule 13 prescribes the duties of the Commissioners relative to unethical practices or of unprofessional or improper conduct on the part of any member of the State Bar.

Rule 17 affords only active members in good standing in the State Bar the right to vote or to hold office in the State Bar.

"Rule 12. Authority of board.—The Board is the administrative and executive agency of the State Bar and shall have power, subject to the approval of the Supreme Court, to adopt by-laws not in conflict with these rules, regulating the selection of its officers and the terms of its committees and their powers and

duties, and regulating the transaction of the business of The Board and the State Bar. The Board shall likewise have the power to promote or maintain the printing and distribution of reports, pamphlets and other publications designed to educate and inform the State Bar and the public.''

Careful examination will disclose that the statutory provisions supplemented by the rules and regulations promulgated and approved by the Judiciary are designed to afford all the power and authority necessary, at least for these States, to integrate their Bars as the best known system so far devised for a State and its Judiciary to protect successfully (1) the interests of the public, the State, the Judiciary, the administration of justice, those of its membership, individually and collectively, by its supervisory authority relative to the practice of the law, (2) to engage in activities intended to advance the science of jurisprudence, with the Judiciary, by statute or by its inherent power, acting at all times in a supervisory capacity as guardian of all the activities of the Bar so as to insure that none engages in pursuits outside of the realm of the power and authority defined by law.

III

THE INTEGRATED BAR HAS PROVED TO BE SUCCESSFUL FOR NEARLY FORTY YEARS IN SUPERVISING THE ACTIVITIES OF THE ENTIRE MEMBERSHIP IN THE PRACTICE OF THE LEGAL PROFESSION AND IN PERFORMING THE FUNCTIONS PRESCRIBED BY STATE LAW FOR THE GENERAL WELFARE OF THE PUBLIC AND THE ADVANCEMENT IN THE ADMINISTRATION OF THE LAW AS WELL AS FOR THE BENEFIT OF THE MEMBERSHIP.

Since its inception in 1921, the system of Integrated Bars now adopted by more than half of the States has proved beyond question its value as an agency of those

States and their Judiciary, selected to perform the functions for which they have been established without infringing or offending the constitutional rights of those within the orbit of their functions and operations. An Integrated Bar protects jealously not alone the interests of the membership as a whole, but with equal force and effect those of each member, *all* under the supervisory power of the Judiciary and the legislative enactments.

Appellee, in the case at bar, at page 14 of his brief in support of his motion to dismiss the appeal, states that the Integrated Bar system has proved so successful no state which has adopted it has changed back permanently to a voluntary form of organization, and, at pages 18-20 of the same brief, further states that the validity under the Federal Constitution of the Integrated Bar system has been upheld in every State where the question has arisen. See cases collected in 114 A. L. R. 161 and 151 A. L. R. 617 supplemented by citations at page 614, Vol. 3, A. L. R. Blue Book (1952-1958) and 1960 A. L. R. Blue Book at page 222.

IV

THIS COURT IN THE HANSON CASE HAS RULED IN SUBSTANCE AND EFFECT THAT THE INTEGRATION OF THE BAR BY A STATE IS VALID IN ALL RESPECTS.

This Court, in the case of *Railway Employes' Dept.* v. *Hanson,* 351 U. S. 225, in substance and effect has upheld the validity of the Integrated Bar under the Federal Constitution. In that case this Court upheld a railroad union shop agreement made under the Railway Labor Act, requiring *all* employees to belong and pay periodic dues to a union. In answer to the argument that a union shop agreement forces men into ideological and political associations which violate the right to freedom of conscience, association

and thought protected by the Bill of Rights, that once a man becomes a member of these unions he is subject to vast disciplinary control, and that by force of the Federal Act a union now can make him conform to their ideology, MR. JUSTICE DOUGLAS for this Court, at page 238, said:

> "On the present record, *there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar.*" (Italics supplied.)

The ruling and the reasons therefor made by this Court in the *Hanson* case upholding the action taken by a union under a Federal Act applies with equal force and effect to the integration of a State Bar under state law, regardless of whether accomplished by the exercise of its police power through statutory enactments or by judicial rules. The result must be the same since the only real difference is that the authority on the one hand came from a valid *Federal* source and on the other from a valid *State* source. This perhaps suggested itself to this Court in that case by its recognition of the striking similarity of a union "closed shop" agreement under a valid Federal Act and the integration of a Bar by valid State Enactments and Judicial Rules and Regulations. This analogy is discussed at length in the brief for the appellants (pages 44-48), in the case of *International Association of Machinists, et al.* v. *S. B. Street, et al.*, No. 4, October Term 1960, on the Docket of this Court, which is on appeal from the Supreme Court of Georgia, and set for argument immediately preceding the instant case.

V

THE INTEGRATED BAR IS A SELF-GOVERNING ORGANIZATION SUBJECT TO THE SUPERVISION OF THE JUDICIARY OF THE STATE.

The Integrated Bar is a self-governing Bar. Provision is made for the election of officers by the membership of the Bar; annual meetings are to be held at which the officers and committees of the Integrated Bar are to make their reports. Ariz. Rev. Stat. Ann. (1956), §§32-233, 32-241; Idaho Code (1947), §§3-403, 3-417; Ore. Rev. Stat., §§9.020, 9.030, 9.040, 9.120, 9.130; Utah Code Ann. 1953, §§78-51-5, 78-51-6, 78-51-8, By-Laws 1-1 through 3-7; Wyo. Stat. 1957, §5-22, Rules of Supreme Court of Wyo., Nos. 7-10. At the meetings the membership of the State Bar rule by majority vote, although individual members or by group can voice their objections to activities of the Integrated Bar. See Ore. Rev. Stat., §9.130; Utah, §3-6 of By-Laws, *supra,* at p. 17. The governing body of the Integrated Bar cannot abuse its power since at all times it is under the supervisory control of the Judiciary of the State. Indeed every member in an Integrated Bar is afforded an opportunity to do his share in carrying out the public service of the Bar, and to bear his portion of responsibility as a member.

VI

IN INTEGRATING ITS BAR IT IS FOR THE STATE TO SELECT THE WAYS AND MEANS BY WHICH THE PURPOSES AND FUNCTIONS PRESCRIBED BY LAW AND COURT RULE SHALL BE FINANCED TO CARRY OUT THE MANDATES THEREOF, AND THE IMPOSITION OF A REASONABLE PERIODIC LICENSE FEE ON THE MEMBERSHIP IS VALID.

In the case of *Railway Employes' Dept.* v. *Hanson,* 351 U. S. 225, 235, involving the question of the validity of §2, Eleventh, of the Railway Labor Act, authorizing a union

to collect periodic dues, initiation fees, and assessments, but no fines and penalties, MR. JUSTICE DOUGLAS for this Court said: "The financial support required relates, therefore, to the work of the union in the realm of collective bargaining. No more precise allocation of union overhead to individual members seems to us to be necessary." And at page 238, it is further stated: "Congress endeavored to safeguard against [the impairment of freedom of expression] by making explicit that no conditions to membership may be imposed except as respects 'periodic dues, initiation fees, and assessments'." Concluding, the opinion at page 238 states: "For we pass narrowly on §2, Eleventh of the Railway Labor Act. We only hold that the requirement for financial support of the collective-bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either the First or the Fifth Amendments."

The reasoning of this Court in the *Hanson* case as to the validity of the Federal Act to empower a union to collect dues, initiation fees and make assessments, applies in all respects with equal force and effect to an enactment by the legislature of a State and rules and regulations by its Judiciary integrating its Bar, the legislature exercising its police power and the Judiciary its inherent power. It is a valid exercise of those powers to provide that the membership of the Integrated Bar contributes a fair and reasonable license fee towards the expense of maintaining the professional organization so established by law; and it has been so held by the courts which have considered the question since to do so is clearly within the realm of the authority in connection with the integration of a Bar. See Brief for Appellants in *International Association of Machinists* v. *Street, supra,* at page 46, where this matter is discussed in support of the collection and use of dues by a

union under a "closed shop" contract as involved also in the *Hanson* case, and the cases cited in support of this argument. The financing of the Integrated Bar in fact is so essential that without such aid it would cease to function in the manner for which it was designed and intended by the State. One of the many weaknesses of the voluntary association of the practitioners of the law was the inadequate financing of the work of the Bar when a small group undertakes to carry a burden which experience has proved must rest on the entire profession. See Winters, Bar Association Organization and Activities, pp. 6, 8, and cases collected in note 14 on page 8. If the license fee prescribed and imposed and collected periodically is fair, reasonable and just, its validity is beyond question since it is definitely germane to the principal purposes for which the Bar is integrated, and is just as much a part of the policy exercised by the State and the inherent powers of the Judiciary as are all the other provisions for the integration of the Bar. In fact the one—integration of the Bar—cannot stand without the other—the adequate financing of the Integrated Bar—in order to carry out *all* of its prescribed functions under the supervision of the Judiciary.

VII

THE USE OF FUNDS DERIVED FROM THE LICENSE FEES IS VALID, SINCE THE USE ENABLES THE GOVERNING BODY TO CARRY OUT ALL OF THE ACTIVITIES AUTHORIZED BY STATE LAW AND RULES OF COURT, SUBJECT TO APPROPRIATE JUDICIAL SUPERVISION OF THE STATE BAR WHEN INTEGRATED.

The very fact that the States subscribing to this brief have prescribed reasonable and necessary functions and fields of activity of the governing bodies in integrating their Bars compels the view that the fees collected thereunder must be used exclusively in carrying out the duties and responsibilities imposed thereby, and not otherwise.

As has been seen the Judicial supervision of the Integrated Bar and the voting power afforded its membership at meetings will prevent any activity by all of the officers of the Bar to step outside the limits of their prescribed functions. In the brief for the United States filed in *International Association of Machinists* v. *Street, supra,* at pages 37-38, it is stated:

> "The primary contention made by appellees here, and accepted by the courts below, is that, by spending a substantial part of the fees and dues collected from appellees for the disputed objectives, the unions are depriving appellees of their constitutional rights. The offensive feature of the unions' activity is claimed to be the expenditure of the fees and dues, not merely their collection. They object to being forced to support political candidates and measures they prefer to reject. Thus, if appellees' fees and dues were used exclusively for the negotiation, maintenance, and administration of collective bargaining agreements, appellees would have no objection, *and at any rate the whole case would be plainly governed by Hanson.* (Italics supplied.)

In its brief, appellants in *International Association of Machinists* v. *Street, supra,* at pages 46-47, states:

> "The arguments which have been rejected by the courts in upholding integration of the bar and suspending or disbarring attorneys who failed to pay dues are in all respects similar to the arguments made by appellees here. See *In re Florida Bar,* 1952, 62 So. 2d 20, 23. Similarly, see *In re Mundy,* 1942, 202 La. 41, 11 So. 2d 398, where a lawyer refused to pay dues to an integrated bar on the ground that he had the constitutional right to belong or not belong to a bar association."

In the same brief at page 46, appellants cite and quote from Wicker, The Pros and Cons of an Integrated Bar, (Dec. 1954), 23 Tenn. Law Rev. 457, 459:

> "The must-be-a-member and the must-pay-dues provisions in the enabling acts of integrated bars have been passed on many times by the courts and every court that has considered them has held them valid." (Citing cases in footnote 4 on page 46 of the brief.)

Continuing the brief, at page 46, further states:

> "Although the integrated bar cases rely on the alleged distinction between special privilege callings and common callings, this issue is irrelevant once it has been accepted that even persons in a common calling can be required to belong to a union and pay dues and fees to it as a condition of continued employment. No one disputes that this Court in *Hanson* (351 U. S. 225) settled at least that issue."

Certainly if it is constitutional for a union under a Federal Act to impose and collect dues to be used for the purposes for which the "closed shop" was established, as ruled in the *Hanson* case, it must be equally constitutional in the entirety for the Integrated Bar to levy or impose on its membership a periodic license fee as a necessary and valid financial aid to it in the performance of the functions lawfully prescribed for it by the enabling authority, especially since these functions are always subject to the supervisory control of the Judiciary as well as the membership of the Integrated Bar by its voting power. This financial support does not impose any undue burden upon the membership, and while provision is made for the suspension of a member delinquent in payment of his periodic license fee this is also a necessary and proper requirement if the funds to be collected are to be paid when due.

The *Hanson* case ruled that the "closed shop" agreements made under the provisions of the Federal Act were not null and void, but valid in general on their face. Hence, even if certain expenditures by the unions should be held invalid, this alone would not invalidate the entire agreements. This same reasoning applies with all its force to the validity of the enabling provisions establishing the Integrated Bar, and in any event invalidating the use of these license fees on behalf of some activity objected to by a member, cannot operate to invalidate the whole of the provisions of law of a State and the rules and regulations of its Judiciary establishing the integration of the Bar. As pointed out in the brief of the United States in the *International Machinists* case, *supra*, at pages 40-41, after the decision of this Court in the *Hanson* case, it cannot be contested that the collection of dues and expenditures by the unions for the purposes related to collective bargaining violate any constitutional rights of those required to pay the dues in order to work. And insofar as the claim that the expenditure of certain funds "lead to invalidation of the whole structure of union shop collective bargaining would be to place the rights of the individual appellees—unnecessarily and without adequate reason on this record—above the interests of the majority of the members of the appellant unions." In that brief at p. 41, it is further stated: "The Railway Labor Act itself contemplates [a] system of industrial self-government." Continuing at page 43, it also states: ". . . the courts can provide full protection to the asserted constitutional rights of appellees without interfering or infringing upon the legitimate interests of the majority of the members of appellant unions." Without doubt these forceful arguments compel the conclusion that they must be applied here with equal force and effect to the contentions made against the constitu-

tionality of the integration of a Bar of a State and the collection and use of any license fees collected periodically for the support of the organization within the limits of activity prescribed by the enabling Acts of the State and by Judicial Rule.

In the instant case, the Wisconsin Supreme Court indicated that it would prevent abuse in the administration of the Integrated Bar system by limiting the activities and expenditures of the Integrated Bar, rather than declaring it invalid, 10 Wis. 2d 230, 102 N. W. 2d 404, 412, stating: ". . . any usurpation on the part of the State Bar of the powers of the legislature or the courts will not occur so long as this court sits. Without such usurpation of legislative or judicial power there can be no fascist syndicalism" which the appellant contends will be the end result under the Integrated Bar.

The provisions for the imposition of a license fee to be paid periodically, failure of which subjects the member to suspension from the practice of law, are necessary and reasonable, and, therefore, valid in all respects, at least as to these States, as will be seen by an examination of the statutory provisions and rules of the Judiciary.

Arizona, §32-216, Rev. Stat. Ann., as amended, provides that the annual license fee be not less than $10.00, subject to increase with consent of its Supreme Court. Rule (D) 2, of the Supreme Court, provides that after suspension for nonpayment of fees that the Board may require payment in double the amount of the fees due and shall make recommendation to the court for reinstatement.

Idaho, §3-409, Idaho Code, as amended, provides for an annual fee of $25.00, all moneys payable to the State Treasurer to be kept as a separate fund for

the use of the State Bar. Sec. 3-411 states that the funds received shall be used for "the purpose of carrying out the objects of this chapter, and in the exercise of the powers therein granted and duties hereby imposed."

Oregon, §9.190, Ore. Rev. Stat., the annual fee is $30.00. Reinstatement after suspension for delinquency requires all fees to be paid. §9.200.

Utah, §78-51-21, Utah Code Ann, 1953, as amended, the annual fee is $25.00 and all funds collected shall be deposited with the State Treasurer to be kept as a separate fund for the use of the State Bar in "carrying out the objects of this title." Reinstatement of members delinquent in payment of fees is obtained by application to the State Bar and payment of fees due plus $10.00. Rule VIII, Revised Rules of State Bar approved by Supreme Court.

Wyoming, Rule 5, Supreme Court, page 24, Vol. 2, Wyo. Stat. 1957, the annual fee being $20.00, all moneys collected to be paid to and disbursed by the Board, and delinquent member is reinstated upon good cause shown by payment of fees due, unless upon hearing the member is unable to pay the fee, then it may be remitted or suspended by order of court.

The fact that the funds are to be used exclusively for carrying out the purposes and functions defined by law precludes any chance of usurpation of constitutional rights of the membership, and the Judiciary of each of these States at all times acts in a supervisory capacity over the activities of these State Bars.

While appellant, at pages 71-75 of his brief, contends that the instant case is one involving "forced affirmation

of beliefs or opinions," there is not the slightest compulsion upon him to speak or to refrain from speaking on any issue. The only compulsion upon appellant is that he must belong to the State Bar in order to practice law. The State Bar, in turn, may take public stands on matters within its professional province as prescribed by law, subject always to the supervision of the Judiciary of the State. Therefore, to equate such public expressions of opinion by the State Bar, of which an individual is a member, with the individual affirmation compelled by the flag salute law in *West Virgina State Board of Education* v. *Barnette,* 319 U. S. 624, is to obscure very real differences of controlling constitutional significance.

The requirement that full report shall be made periodically to the membership in regard to the activities of the State Bar, and the expenditures in connection with the carrying out of the purposes and functions prescribed by law, alone affords ample supervisory control over the State Bar by its membership as well as the Judiciary. Moreover, no member is without appropriate remedy to make objections to the activities or use of funds of these integrated State Bars. He has the right and privilege to object to the activities and the expenditure of funds, deemed used without authority or for the purposes to which he objects, at their annual meetings, special meetings, and by suit in appropriate courts contesting any specific activity or the use of these funds for specific activities claimed to be illegal or to be an infringement of his constitutional rights. In any such instance the court would not be required to inquire into the power of a State to integrate its Bar, since that is strictly a matter of State policy and the exercise of the inherent power of its Judiciary, into which the court cannot examine since the authority of both is exclusive to the State and its Judiciary. The court is

limited in its review to the provisions of the enabling law and the Rules and Regulations of the Judiciary to determine whether they are reasonable and necessary to carry out the purposes intended thereby.

CONCLUSION

For the foregoing reasons, at least as to these States, it is believed that there is ample power in a State and its Judiciary to integrate its Bar. Further, that the imposition of a periodic license fee from the membership in order to carry out the purposes and functions prescribed by law to protect and promote the interests of the public, the State, the Judiciary in the administration of the law, and the science of jurisprudence and related subjects—is a necessary and proper obligation validly imposed on the membership of the Bar, subject always as it is to the plenary supervision of the Judiciary of the State and the entire membership of its Bar.

Respectfully submitted,

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